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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONNIE G. WIGGINS,

Plaintiff,

v.

BRIAN A. BLEDSOE, et al.

Defendants.

CIVIL ACTION

Case No.: 3:11-cv-1298

Judge Munley

JOINT CASE MANAGEMENT PLAN

Instructions: In many cases there will be more parties in the action than there are spaces provided in this form. Each party shall provide all requested information. If the space on this form is not sufficient, the form should be retyped or additional pages attached.

No party may submit a separate Case Management Plan. Disagreements among parties with respect to any of the matters below shall be set forth in the appropriate section.

Having complied with the meet and confer requirements set forth in the LOCAL RULES, or with any orders specifically modifying their application in the above-captioned matter, the parties hereby submit the following Joint Case Management Plan.

1. Principal Issues

1.1 Separately for each party, please give a statement summarizing this case: By plaintiff(s):

This is a civil action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against the Warden and various Corrections Officers at the United States Penitentiary in Lewisburg, Pennsylvania (“USP Lewisburg”),¹ and a negligence claim against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2761 *et seq.* by Plaintiff Ronnie G. Wiggins. On July 16, 2009, Plaintiff was attacked in a recreation cage by four other inmates while imprisoned on the Z-Block of the USP Lewisburg. During this attack, Plaintiff was stabbed twenty-two times and suffered serious bodily injury resulting in surgery and a seven-day hospital stay. As employees of the Federal Bureau of Prisons and USP Lewisburg, each Defendant was responsible for protecting Plaintiff’s constitutional rights while Plaintiff was an inmate at USP Lewisburg, including the right to be free from vicious attacks by other inmates. Defendants had reason to know of the danger to Plaintiff because of longstanding separation requirements between Plaintiff and his attackers. Additionally, the Defendants present during the attack sat idly by while Plaintiff was brutally assaulted, and did not intervene until well after the attack was finished. Because of Defendants’ failure to protect Plaintiff, he

¹ The Defendants include Brian A. Bledsoe, Chuck Maiorana, Krista Rear, J. Dunkelberger, John Adami, J. Fosnot, F. Perrin, S.V. Heath, Nelson Dreese, Jim Flemming, Tim Crawford, Jim Hepner, Jason Murray, Tom Yost, Randy Loss, Greg Edinger, Lester Yohe, Dennis Campbell, and Michael Hornberger in their individual capacity.

sustained life-threatening injuries which continue to affect him physically, emotionally, and psychologically. Plaintiff seeks compensatory and punitive damages, as well as attorney's fees, costs, and such other relief as the Court deems appropriate.

By defendant(s):

This is a Bivens² civil rights action and FTCA claim brought by Plaintiff, Ronnie G. Wiggins (Wiggins), currently designated to the United States Penitentiary – McCreary, in Kentucky. Wiggins was incarcerated at USP-Lewisburg, in Pennsylvania during the time relevant to this action. (Id.) Wiggins names as Defendants: to his Bivens claim: B.A. Bledsoe, Warden; C. Maiorana, Associate Warden (Currently assigned to FCC Allenwood); K. Bahre (Rear), Associate Warden; J. Dunkelberger, Case Management Coordinator; J. Adami, Unit Manager; J. Fosnot, Special Investigative Agent; F. Perrin, Special Investigative Agent; S. Heath, Lieutenant; N. Dreese, Special Investigation Technician; J. Flemming, Lieutenant; T. Crawford, Correctional Officer; J. Hepner, Lieutenant; J. Murray, Correctional Officer; T. Yost, Correctional Officer; R. Loss, Correctional Officer; G. Edinger, Human Resources Specialist; L. Yohe, Correctional Officer; D. Campbell, Correctional Officer; M. Hornberger, Correctional Officer; and the United States in his tort claim (collectively referred to as Defendants). Wiggins alleges Eighth Amendment violations of deliberate indifference to risk of harm and alleges negligence in a tort claim against the United States. Wiggins seeks punitive and compensatory damages.

On May 19, 2008, Wiggins arrived at USP Lewisburg from USP Victorville. Wiggins was

² Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

transferred due to a violent assault that he perpetrated at USP Victorville, his history of prison gang involvement, his history of disruptive behavior in the federal prison system, and his lack of institutional adjustment. The federal Bureau of Prisons (BOP) maintains a list for Wiggins of individual inmates with whom he should not have direct contact. These inmates are known as his separatees. The BOP does not maintain a list of prison gang organizations for separation purposes. In the BOP's institutional experience, it is not pragmatically possible to maintain such a list given the difficulty in maintaining accurate information of which inmate is a member of any particular gang at any particular time.

Upon intake at USP Lewisburg, Wiggins was asked if there was any reason that he could not be placed in general population and he replied that there was not. Wiggins was present at USP Lewisburg for almost a year before the assault on July 16, 2009. On that date, Wiggins was taken to recreation pursuant to the standard operating procedure at USP Lewisburg. Such procedures permit inmates to refuse to go to recreation. Such procedures also include a review by staff of each inmate's separatees to determine with whom they may be placed in a recreation cage. On July 16, 2009, none of the inmates who committed the assault were listed as a separatee of Wiggins. According to video surveillance of the assault, Wiggins was escorted to the recreation cage, he greeted and embraced the individuals in the cage, and he began to disrobe for exercise. There was no prior indication that an assault was imminent or that Wiggins did not want to be placed in the cage out of a fear for his safety.

The assault began and staff responded within moments. Based on their training and institutional experience, BOP staff will not be permitted to enter a recreation cage where a violent assault with a weapon is occurring or has occurred until approved by a lieutenant or a staff member above a lieutenant. When staff arrived at the cage, the inmates who committed the

assault immediately stopped and went to the other side of the cage. Staff ordered the inmates to submit to restraints and the inmates were removed from the cage. The construction of the cage is such that only one inmate can have restraints applied and removed at a time. Once all the inmates were removed, BOP staff were able to safely enter the cage and provide Wiggins with medical treatment. The entire incident until medical treatment was provided lasted just over four minutes.

At no time prior to the assault did any BOP staff member have knowledge that Wiggins was in danger of an assault by the inmates in the recreation cage on July 16, 2009. Assaults are an unfortunate part of prison life and more so for inmates engaged in prison gangs and who commit assaults on other inmates themselves. The BOP takes reasonable measures to provide for the safety of inmates. On July 16, 2009, the BOP did not breach any duty owed to Wiggins. Additionally, no action or inaction by the BOP or its staff caused the assault or any of Wiggins' injuries that he sustained on July 16, 2009. Therefore, Defendants are not liable under Pennsylvania negligence law and no Defendant violated any constitutional right.

1.2 The facts the parties dispute are as follows:

Plaintiff disputes that the Defendants were unaware of his need to be separated from his assaulters. He further disputes that they acted with reasonable speed to halt the attack. Defendants contend that their actions or inactions did not cause the assault or any of Wiggins' injuries that he sustained on July 16, 2009. Defendants' actions or inactions did not violate any of Wiggins' constitutional rights. Specifically, Defendants deny that Plaintiff notified any BOP staff member that the individuals who assaulted him on July 16, 2009 were a threat to his safety. Defendants deny that the individuals that assaulted Plaintiff were listed as separatees for Plaintiff. Defendants deny that they maintain a list of separatees based on prison gang

affiliation. Defendants deny that Plaintiff expressed any concern for his safety prior to entering the recreation cage on July 16, 2009. Defendants deny that they knew or should have known that Wiggins would be assaulted on July 16, 2009.

agree upon are as follows:

The parties agree that Mr. Wiggins was assaulted in the recreation cage, and that this attack caused injury to Plaintiff. The parties agree that at the time in question, all individual Defendants were employees of USP Lewisburg. The parties also agree that Defendants Yohe and Edinger escorted Plaintiff through the recreation cage area on the day in question.

1.3 The legal issues the parties dispute are as follows:

Plaintiff disputes that the “discretionary function” bars his claims against the Defendants. Defendants dispute that they breached any duty owed to Plaintiff. Defendants’ actions or inactions did not cause the assault or any of Wiggins’ injuries on July 16, 2009. Defendants’ actions or inactions did not violate any of Wiggins’ constitutional rights.

agree upon are as follows:

The parties agree that jurisdiction and venue are proper in this Court.

1.4 Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:

None.

1.5 Identify any named parties that have not yet been served:

None.

1.6 Identify any additional parties that:

plaintiff(s) intends to join:

None at this time. Plaintiff reserves the right to add additional defendants based upon facts learned in discovery.

defendant(s) intends to join:

None.

1.7 Identify any additional claims that:

plaintiff(s) intends to add:

Plaintiff does not intend to add any other claims at this time. However, investigation is continuing and Plaintiff reserves the right to add additional claims as permitted by the rules.

defendant(s) intends to add:

2.0 Disclosures

The undersigned counsel certify that they have made the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) or that they will do so within the time provided by that rule.

Defendants made their initial disclosures on November 17, 2011. Plaintiff made his initial disclosures on the date agreed upon by and between counsel, December 7, 2011.

2.1 Separately for each party, list by name and title/position each person whose identity has been disclosed.

Disclosed by _____ Defendants _____:

1. B.A. Bledsoe, Warden;
2. C. Maiorana, Warden (FCI Loretto);

3. K. Bahre (Rear), Associate Warden;
4. J. Dunkelberger, Case Management Coordinator;
5. J. Adami, Unit Manager;
6. F. Fosnot, Special Investigative Agent (SIA) former Acting Captain;
7. F. Perrin, SIA;
8. S. Heath, Lieutenant;
9. N. Dreese, Special Investigative Technician;
10. J. Fleming, Lieutenant;
11. T. Crawford, Correctional Officer;
12. J. Hepner, Lieutenant;
13. J. Murray, Correctional Officer;
14. T. Yost, Correctional Officer;
15. R. Loss, Correctional Officer;
16. G. Edinger, Correctional Officer;
17. L. Yohe, Correctional Officer;
18. D. Campbell, Correctional Officer;
19. M. Hornberger, Correctional Officer;
20. F. Passaniti, Unit Manager (FCC Allenwood);
21. D. Deleone, Nurse;
22. D. McIntock, Paramedic;
23. Ryan Parkyn, Assistant Health Services Administrator-paramedic;

3.0 Early Motions

Identify any motion(s) whose early resolution would likely have a significant effect either on the scope of discovery or other aspects of the litigation:

Defendants may move for a protective order regarding particular documents that implicate institutional security. Negotiations regarding this agreement are ongoing between counsel for both parties.

4.0 Discovery

4.1 Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

None.

By defendant(s):

None.

4.2 Describe any discovery that all parties agree should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g., "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"):

(1) Document Requests

Plaintiff will request documents concerning the (1) Bureau of Prison's policies regarding inmate cell assignment and transfer, movement within prisons, recreation cages, searches, and videotaping, amongst other topics, (2) the disciplinary records of the defendants and (3) the events leading up to the assault, including, but not limited to, incident reports from Corrections Officers, video, audio, or photographic records, any records of internal investigations at USP Lewisburg, the contents of Plaintiff's Federal Bureau of Prisons file and any medical records relating to the assault, amongst other topics.

(2) Interrogatories

Plaintiff will serve interrogatories to learn, for example, the identity of any potential witnesses, the Defendants' roles and experience at the prison, and the factual basis for Defendants' contentions, amongst other topics.

(3) Depositions

Plaintiff will need to depose the Defendants in this matter, any witnesses to the attack, medical personnel who treated Plaintiff, and other witnesses who emerge during the course of discovery.

- 4.3 Describe any discovery that one or more parties want(s) to conduct but to which another party objects, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it:

None at this time.

- 4.4 Identify any subject area limitations on discovery that one or more parties would like imposed, at the first stage of or throughout the litigation:

Plaintiff cites no subject area limitations for discovery at this time.

- 4.5 For each of the following discovery tools, recommend the per-party or per-side limitation (specify a number) that should be fixed, subject to later modification by stipulation or court order on an appropriate showing (where the parties cannot agree, set forth separately the limits recommended by plaintiff(s) and by defendant(s)):

4.5.1 depositions (excluding experts) to be taken by:

plaintiff(s): 25 defendant(s): 25

4.5.2 interrogatories to be served by:

plaintiff(s): 25 defendant(s): 25

4.5.3 document production requests to be served by:

plaintiff(s): 35 defendant(s): 35

4.5.4 requests for admission to be served by:

plaintiff(s): 25 defendant(s): 25

4.6 Discovery of Electronically Stored Information

Counsel certify that they have conferred about the matters addressed in M.D. Pa. LR 26.1 and that they are in agreement about how those matters will be addressed in discovery.

Counsel have conferred regarding electronic discovery.

Counsel certify that they have conferred about the matters addressed in M.D. Pa. LR 26.1 and that they are in agreement about how those matters will be addressed in discovery with the following exceptions:

N/A

5.0 Protective Order

5.1 If entry of a protective order is sought, attach to this statement a copy of the proposed order. Include a statement justifying the propriety of such a protective order under existing Third Circuit precedent.

5.2 If there is a dispute about whether a protective order should be entered, or about certain terms of the proposed order, briefly summarize each party's position below:

Counsel for both parties are currently in negotiations regarding a protective order concerning information and documents that implicate institutional security. Within 45 days of the filing of this Joint Case Management Plan, the parties will either file an agreed upon protective order with the Court, or will file a protective order with the court that reflects those portions to which the parties agree and those portions on which the parties disagree, with a statement of the position of each.

6.0 Scheduling

6.1 Final date for joining additional parties:

July 20, 2012 Plaintiff(s)
July 20, 2012 Defendants(s)

6.2 Final date for amending pleadings:

July 20, 2012 Plaintiff(s)

July 20, 2012 Defendants(s)

6.3 All fact discovery commenced in time to be completed by:

July 6, 2012

6.4 All potentially dispositive motions should be filed by: October 19, 2012

6.5 Reports from retained experts due:

from plaintiff(s) by August 17, 2012

from defendant(s) by September 14, 2012

6.6 Supplementations (replies/rebuttals) due September 28, 2012

6.7 All expert discovery commenced in time to be completed by October 5, 2012

6.8 This case may be appropriate for trial in approximately:

 240 Days from the filing of the action in this court

 x 365 Days from the filing of the action in this court

 Days from the filing of the action in this court

6.9 Suggested Date for the final Pretrial Conference:

December, 2012 (month/year)

6.10 Trial

6.10.1 Suggested Date for Trial:

January, 2013 (month/year)

7.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)

I hereby certify that the following individual(s) have settlement authority.

Ronnie Wiggins
Name

Title

USP McCreary

P.O. Box 3000

Pine Knot, KY 42635
Address

(606) 354 - 7000 Daytime Telephone

Peter J. Smith
Name

United States Attorney – Middle District of Pennsylvania
Title

228 Walnut Street, P.O. Box 11754

Harrisburg, PA 17108
Address

(717) 221 - 4482 Daytime Telephone

Michael Tafelski
Northeast Regional Counsel – BOP
US Customs House
2nd and Chestnut Streets
Philadelphia, PA 19106
570-521-7376

8.0 Alternative Dispute Resolution ("ADR")

- 8.1 Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.

ADR procedure _____

Date ADR to be commenced _____

Date ADR to be completed _____

- 8.2 If the parties have been unable to agree on an ADR procedure, but one or more parties believe that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended:

Plaintiff would be willing to participate in a settlement conference at the close of discovery.

- 8.3 If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:

9.0 Consent to Jurisdiction by a Magistrate Judge

Indicate whether all parties agree, pursuant to 28 U.S.C. § 636(c)(1), to have a magistrate judge preside as the judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:

All parties agree to jurisdiction by a magistrate judge of this court: ☐ Y ☒ N.

If parties agree to proceed before a magistrate judge, please indicate below which location is desired for the proceedings:

☐ Scranton/Wilkes-Barre

☐ Harrisburg

10.0 Other Matters

Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.

11.0 Identification of Counsel

Counsel shall be registered users of the court's Electronic Case Files System (ECF) and shall file documents electronically in accordance with the Local Rules of Court and the Standing Order RE: Electronic Case Filing Policies and Procedures. Electronic filing is required unless good cause is shown to the Chief Judge why counsel cannot comply with this policy. Any request for waiver of electronic filing must be filed with the Clerk's Office prior to the case management conference. The Chief Judge may grant or deny such request.

Identify by name, address, and telephone number lead counsel for each party. Also

please indicate ECF User status below.

/s/ Francis J. Dermody

Stephen D. Brown

Christine C. Levin

Jennifer L. Burdick

Sean P. McConnell

Dechert LLP

Cira Centre

2929 Arch St.

Philadelphia, PA 19104

Attorney(s) for Plaintiff(s)

X ECF User(s) (except Stephen D. Brown and Sean P. McConnell)

O Waiver requested (as separate document)

O Fed.R.Civ.P.7.1 (statement filed if necessary)*

Dated:

Timothy S. Judge

Assistant United States Attorney

235 N. Washington Ave.

P.O. Box 309

Scranton, PA 18503

570-348-2800

Attorneys(s) for Defendant(s)

X ECF User(s)

G Waiver requested (as separate document)

G Fed.R.Civ.P.7.1 (statement filed if necessary)*

Dated:

* Fed.R.Civ.P.7.1 requires a nongovernmental corporate party to file a statement with the initial pleading, first entry of appearance, etc., that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock, or state there is no such corporation.